

## **-NOAA Marine Operations Center—Pacific Lease Acquisition**

### **BACKGROUND**

On August 7, 2009, the National Oceanic and Atmospheric Administration (NOAA) awarded a long-term lease to the Port of Newport, in Newport, Oregon as the future site of NOAA's Marine Operations Center—Pacific. The award was the result of a competitive process, conducted pursuant to Federal lease acquisition regulations. As such, certain statutory and regulatory provisions restrict the release of source selection and contractor proposal information both during and after the completion of a competitive acquisition. These restrictions are intended to protect the confidential and proprietary information of those who elect to compete for Federal contracts. In addition, the regulations protect the integrity of the procurement process to ensure that source selection officials are able to carry out their duties without regard to political or personal interference. These standards are set out in the Procurement Integrity Act, 41 U.S.C. 423, and are implemented by Subpart 3.104 of the Federal Acquisition Regulation. Release of some information both before and after award may also be prohibited by the Privacy Act, 5 U.S.C. 552a, and the Trade Secrets Act, 18 U.S.C. 1905.

The synopsis that follows contains information that NOAA is legally permitted to disclose regarding the MOC-P lease award to the Port of Newport. The following synopsis sets out the lease acquisition process, the evaluation criteria that NOAA officials followed in evaluating the offers received, and the award decision.

### **PURPOSE OF AWARD**

The purpose of the acquisition was to award a long-term operating lease to support NOAA's Office of Marine and Aviation Operations (OMAO) MOC-P requirements. The current MOC-P lease expires June 30, 2011. MOC-P provides centralized management of ten NOAA ships on the West Coast, including Alaska and Hawaii, and is the permanent homeport for four of these ships. MOC-P has 110 ship crew members and 60 staff. The lease that will result from this acquisition will require the landlord to provide approximately 31,010 rsf, 75-100 parking spaces (50 secured), 10,000 sf of open storage, 20,000 sf of laydown area, 1,560 usable linear feet of piers for large ships with pier width of 25 feet (20 feet usable) with 30 feet or more width preferred, and 400 linear feet of small boat piers.

### **OVERVIEW OF LEASE/ACQUISITION PROCESS**

NOAA followed a prescribed, competitive process to acquire a new lease for land, buildings and structures to support the MOC-P.

- NOAA is acquiring land, buildings and structures by lease, under delegated authority (September 5, 2008 delegation) from the General Services Administration (GSA) (40 U.S.C. 585 as implemented by GSA Regulations (GSAM) Section 570).

- The GSA authority is further defined under Federal Management Regulations (FMR) 40 CFR Part 73.45 and FMR Bulletin 2008-B1, which delineates the process under which agencies—such as NOAA—are delegated authority for leases that are less than prospectus level (for FY 2009, this is \$2.66M annual rent without operating costs).
- The MOC-P acquisition, because of its estimated rent, requires a full and open competition under GSAM 570.3. Under a full and open competition, specific steps and procedures are required, which are outlined below.

The competitive process involves the following steps leading up to award and subsequent occupancy:

1. **MARKET ANALYSIS:** Designed to determine whether there is sufficient likelihood of competition within a geographically-delineated area. The market analysis for the MOC-P lease acquisition was used to validate the selection of Washington and Oregon for the delineated area. The market analysis was completed in October 2008.
2. **SOLICITATION FOR OFFERS (SFO):** The SFO is issued to all prospective, interested offerors, and is published in Federal Biz Ops. The SFO includes the description of requirements, the schedule for submission of formal offers, the technical evaluation factors, and the source selection procedures. The SFO stated that this acquisition is to be a “best value” selection. The SFO is required to comply with the competition requirements under Federal Acquisition Regulations (FAR) Part 15, (15.304 and 15.101-1 or -2) for source selection actions. The SFO for MOC-P was released November 21, 2008, with proposals due February 4, 2009.
  - NOAA uses a “best value” source selection process (pursuant to GSA Regulations Section 570.304) for major acquisitions.
  - The best value method allows the Government to conduct a comparative assessment of proposals against specific selection criteria. The method allows projects to be awarded to contractors that offer the best combination of price and technical qualifications.
3. **EVALUATION OF OFFERS AND NEGOTIATIONS:** All timely offers are evaluated against the technical evaluation factors, with discussions and formal negotiations, as necessary. For MOC-P, the technical offers for these sites were evaluated in March 2009 by the Source Evaluation Board (SEB), comprised of real property experts, engineers, and technical representatives from the Office of Marine and Aviation Operations at MOC-P—all Board members were based in Seattle, WA.

Following evaluation of both technical and cost factors, the Source Selection Official and the contracting officer determined the competitive range. Offers were individually notified, by letter dated April 20, 2009, of their inclusion in the competitive range along with possible discussion points for the negotiation.

Negotiations were held with each offeror on April 28-29, 2009; final offers were due on June 4, 2009.

The SEB reconvened and reviewed the final technical offers. The contracting officer conducted a price analysis of the offers, reviewed the SEB's technical analysis of the offers, and made a recommendation to the Source Selection Official.

4. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) ASSESSMENT: NOAA is required to comply with NEPA requirements, including the following prior to awarding the lease: due diligence, public scoping, environmental assessment, etc. In the case of MOC-P, four sites were assessed:

- o 1801 Fairview Ave East, Inc., Lake Union, Seattle, WA (existing MOC-P site);
- o Port of Port Angeles, Port Angeles, WA (Terminal 3);
- o Port of Bellingham, Bellingham, WA (Bellingham Shipping Terminal); and
- o Port of Newport, Newport, OR (Dock 2).

On July 29, 2009, NOAA issued a Finding of No Significant Impact (FONSI) for all four of the sites assessed.

5. LEASE AWARD: Once NEPA reviews are complete, the government determines the proposal that represents the best value (see below) to the government, makes an award to the successful offeror, and notifies the unsuccessful offerors. In the case of MOC-P, the Source Selection Official reviewed the contracting officer's recommendation, including the SEB's technical evaluation report and the contracting officer's price analysis, and made the best value determination on August 4, 2009.

The Port of Newport (OR) was selected as future site for MOC-P, with the lease award being made on August 7, 2009. The unsuccessful offerors were notified via email that they were not selected. The unsuccessful offerors were sent a letter advising them of the opportunity for a debriefing, and information regarding their right to file a protest; debriefings were conducted on August 17-18, 2009.

## **MOC-P LEASE AWARD**

### **Technical Evaluation:**

Technical Evaluation Criteria: The evaluation factors and subfactors used to assess the technical merits of each offer were set forth in the SFO, as follows:

- Factor "A" Location of Site
  - Subfactors
    1. Site Compatibility
    2. Proximity to Shipping Route
    3. Proximity to NOAA Western Regional Center
    4. Proximity to "for-hire" Labor
    5. Access to Fire Protection
    6. Proximity to Emergency Medical Facility
    7. Access to Fuel
    8. Access to Airport

- 9. Access to Public Transportation
  - 10. Proximity to Shipyard/Dry Dock
  - 11. Physical Barriers
  - 12. Access to Solid Waste Removal
- Factor “B” Site Configuration and Management
    - Subfactors
    - 1. Site Configuration
    - 2. Site Protection
    - 3. Environmental Concerns and Natural Areas
    - 4. Tidal Range and Water Characteristics
    - 5. Unscheduled Port Closures
    - 6. Frequency of Dredging
  - Factor “C” Quality of Building and Pier
    - Subfactors
    - 1. Quality of Building Design and Efficiency
    - 2. Width of Pier
    - 3. Distance between Two Piers
    - 4. Distance between Piers and any Fixed Obstruction
  - Factor “D” Availability
    - 1. Delivery Timeline
  - Factor “E” Past Performance and Project Financing
    - Subfactors
    - 1. Key Personnel
    - 2. Past Performance
    - 3. Evidence of Capability to Perform
  - Factor “F” Quality of Life
    - Subfactors
    - 1. Housing Availability
    - 2. Schools
    - 3. Proximity to Hotels, Motels, Food, and Recreational Facilities
    - 4. Proximity to Medical/Dental
    - 5. Proximity to Business District

These technical factors were significantly more important than price. Factors A, B, and C were of equal importance; and were significantly more important than Factors D, E and F. Factors D and E were of equal importance; and were significantly more important than Factor F.

The relative importance of the subfactors within the factors were as follows:

- Factor A (Location of Site):
  - Subfactor 1 is more important than individual subfactors 2-12;
  - Individual subfactors 2-6 are of equal importance and are more important than the individual subfactors 7-12; and

- Individual subfactors 7-12 are of equal importance.
- Factor B (Site Configuration & Management):
  - Individual subfactors 1-2 are of equal importance and are more important than individual subfactors 3-6;
  - Individual subfactors 3-5 are of equal importance and are more important than subfactor 6.
- Factor C (Quality of Building and Pier): Individual subfactors 1-4 are of equal importance.
- Factor E (Past Performance & Project Financing): Individual subfactors 1-3 are of equal importance.
- Factor F (Quality of Life):
  - Individual subfactors 1-3 are of equal importance and are more important than individual subfactors 4-5; and
  - Individual subfactors 4-5 are of equal importance.

Technical Ratings of Offers. The final offers submitted on June 4, 2009 were reviewed against these technical evaluation factors by the SEB. The offer submitted by the Port of Newport was judged to be the highest technically-ranked offer.

**Price Evaluation:**

Each Offeror's price was evaluated using the net present value (NPV) method. In addition to the cost of the lease, all offers, other than 1801 Fairview Avenue East LLC, were assessed a \$7,300,000.00 relocation cost. As well as reviewing the NPV for each offer, the annual cost of the lease was also reviewed in order to determine whether the offered price was under the fiscal year 2009 prospectus level and if the lease scored as an operating lease using OMB A-11 Circular scoring Model. The proposal submitted by the Port of Newport offered the lowest price to the Government.

**Best Value Decision:**

Upon review of the technical evaluations of the offerors, and the price analysis, the contracting officer recommended, and the Source Selection Official concluded that the offer from the Port of Newport:

- Met all requirements outlined in the solicitation,
- Was evaluated as the most technically proficient offer, and
- Offers the Government the lowest price.

Based on these considerations, the Port of Newport, OR offer was selected as the offer that provided the best value to the government.

**PROTEST PROCESS**

- Under the leasing process of GSA Regulations (GSAM Section 570), protests are subject to the processes found in GSAM Section 533.

- Prior to submission of a formal protest, all parties are encouraged to use their best efforts to resolve concerns raised by an interested party at the contracting officer level (i.e., starting with the debrief).
- The offerors had several choices regarding filing a protest:
  - To the Agency,
  - To the Government Accountability Office (GAO); and/or,
  - To the United States Court of Federal Claims (COFC).

Protests filed with Agency. Protests to Agency must be filed with the NOAA contracting officer no later than 10 days after the basis of protest is known or should have been known, whichever is earlier. Agencies must seek to resolve the protest within 35 days.

Protests filed with GAO. Protests to GAO must be filed within 10 days of knowledge of Federal action or within 5 days after a debriefing date offered to the protester, whichever is later. GAO must issue its response within 100 days of the protest filing. NOTE: Pursuing an Agency protest does not extend the time for obtaining a stay at GAO.

Protests filed with COFC. In a protest to the COFC, there is a six year statute of limitations for filing, but later COFC protest actions may be meaningless if not filed immediately because construction and occupancy may be proceeding on the awarded site.

- The standard normally applied in considering the protest is whether there is a “reasonable basis” for the government’s action.